

RECEIVED  
CENTRAL FAX CENTER

SEP 13 2005

MARTIN & FERRARO, LLP  
1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632Telephone  
(330) 877-0700Facsimile  
(330) 877-2030

## FACSIMILE TRANSMITTAL

## TO:

Name: Mail Stop AMENDMENT  
Group Art Unit 3764/Examiner M. Brown

Firm: U.S. Patent &amp; Trademark Office

Fax No.: 571-273-4702

Subject: U.S. Patent Application No. 09/497,590

Gary Karlin Michelson

Filed: June 6, 2000

APPARATUS INCLUDING A GUARD MEMBER

HAVING A PASSAGE WITH A NON-

CIRCULAR CROSS SECTION FOR

PROVIDING PROTECTED ACCESS TO THE

SPINE (as amended)

Attorney Docket No. 101.0044-03000

Customer No. 22882

Confirmation No.: 7688

## FROM:

Name: Thomas H. Martin, Esq.

Phone No.: 330-877-2277

No. of Pages (including this): 5

Date: September 13, 2005

Confirmation Copy to Follow: NO

## Message:

## CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that the attached Transmittal Form (in duplicate) and Reply to Restriction Requirement are being facsimile transmitted to the U.S. Patent and Trademark Office on September 13, 2005.

  
Sandra L. Blackmon

If there is a problem with this transmission please call Sandy Blackmon at 330-877-1202 or the sender at the number above.

The information contained in this facsimile message is privileged and confidential information intended only for the use of the addressee listed above. If you are not the intended recipient or the employee or agent responsible to deliver this message to the intended recipient, please do not use this transmission in any way, but contact the sender by telephone.

RECEIVED  
CENTRAL FAX CENTER

FORM PTO-1083

SEP 13 2005

Attorney Docket No.: 101.0044-03000  
Customer No. 22882

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Gary Karlin Michelson, M.D.

Serial No: 09/497,590

Filed: June 6, 2000

For: APPARATUS INCLUDING A GUARD  
MEMBER HAVING A PASSAGE  
WITH A NON-CIRCULAR CROSS  
SECTION FOR PROVIDING  
PROTECTED ACCESS TO THE  
SPINE (as amended)

Confirmation No.: 7588

Group Art Unit: 3764

Examiner: Michael Brown

Mail Stop AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

Transmitted herewith is a Reply to the Restriction Requirement dated August 24, 2005 in the above-identified application.

- ☒ No additional fee is required.
- ☐ Applicant hereby requests a \*\*\*-month extension of time to respond to the above office action.
- ☐ The total amount of \$\*\*\* to cover the above fees is to be charged to Deposit Account No. 50-1068.
- ☒ The Commissioner is hereby authorized to charge any deficiencies of fees associated with this communication or credit any overpayment to Deposit Account No. 50-1068. A copy of this sheet is enclosed.
- ☒ Any filing fees under 37 C.F.R. § 1.16 for the presentation of extra claims
- ☒ Any patent application processing fees under 37 C.F.R. § 1.17

Respectfully submitted,  
MARTIN & FERRARO, LLP

Date: September 13, 2005

By: 

Thomas H. Martin

Registration No. 34,383

1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: 330-877-0700  
Facsimile: 330-877-2030

FORM PTO-1083

Attorney Docket No.: 101.0044-03000  
Customer No. 22882

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Gary Karlin Michelson, M.D.

Serial No: 09/497,590

Filed: June 6, 2000

For: APPARATUS INCLUDING A GUARD  
MEMBER HAVING A PASSAGE  
WITH A NON-CIRCULAR CROSS  
SECTION FOR PROVIDING  
PROTECTED ACCESS TO THE  
SPINE (as amended)

Confirmation No.: 7688

Group Art Unit: 3764

Examiner: Michael Brown

Mail Stop AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

Transmitted herewith is a Reply to the Restriction Requirement dated August 24, 2005 in the above-identified application.

- ☒ No additional fee is required.
- ☐ Applicant hereby requests a \*\*\*-month extension of time to respond to the above office action.
- ☐ The total amount of \$\*\*\* to cover the above fees is to be charged to Deposit Account No. 50-1068.
- ☒ The Commissioner is hereby authorized to charge any deficiencies of fees associated with this communication or credit any overpayment to Deposit Account No. 50-1068. A copy of this sheet is enclosed.
- ☒ Any filing fees under 37 C.F.R. § 1.16 for the presentation of extra claims
- ☒ Any patent application processing fees under 37 C.F.R. § 1.17

Respectfully submitted,  
MARTIN & FERRARO, LLP

Date: September 13, 2005

By: 

Thomas H. Martin

Registration No. 34,383

1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: 330-877-0700  
Facsimile: 330-877-2030

RECEIVED  
CENTRAL FAX CENTER

SEP 13 2005

PATENT  
Attorney Docket No. 101.0044-03000  
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	Confirmation No.: 7688
Gary Karlin Michelson	)	
Serial No.: 09/497,590	)	Group Art Unit: 3764
Filed: June 6, 2000	)	Examiner: Michael Brown
For: APPARATUS INCLUDING A GUARD	)	
MEMBER HAVING A PASSAGE	)	
WITH A NON-CIRCULAR CROSS	)	
SECTION FOR PROVIDING	)	
PROTECTED ACCESS TO THE	)	
SPINE (as amended)	)	

Mail Stop AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REPLY TO RESTRICTION REQUIREMENT**

In reply to the Restriction Requirement dated August 24, 2005, Applicant provisionally elects to prosecute claims 149-187 directed to Group II.

Applicant respectfully traverses the Examiner's contention that "[c]urrently, no claims are generic." (Office Action, page 2, paragraph 2). Applicant respectfully submits that independent claim 149 is generic to both Group I and Group II because the passage of the guard member having a width that is greater than its height (Group I) is a species of the genus represented by the passage of the guard member having a non-circular cross section (Group II). Accordingly, upon the allowance of generic claim 149, Applicant respectfully requests the rejoinder of claims 105-148.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including

Reply to Restriction Requirement 9-13-05.doc

Application No. 09,497,590  
Amendment dated September 13, 2005  
Reply to Office Action of August 24, 2005

any fees required for an extension of time under 37 C.F.R. § 1.136, please  
charge such fees to our Deposit Account No. 50-1068.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: September 13, 2005

By: Thomas H. Martin  
Thomas H. Martin  
Registration No. 34,383

1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: (330) 877-0700  
Facsimile: (330) 877-2030